LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

April 16, 2019

TO: Honorable Dustin Burrows, Chair, House Committee on Ways & Means

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: **HB2993** by Geren (Relating to the appraisal for ad valorem tax purposes of certain nonexempt property used for low-income or moderate-income housing.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend Chapter 23 of the Tax Code, regarding property tax appraisal methods and procedures, to revise the conditions under which the provisions regarding appraisal of certain non-exempt real property used for low-income or moderate-income housing would apply. The bill would:
1) strike the requirement that the low-income housing be rented to a low-income or moderate income individual or family satisfying certain low-income housing organizations' income eligibility requirements on the effective date of Section 23.215 of the Tax Code, regarding appraisal of certain non-exempt property used for low-income or moderate-income housing, and instead require that the property be held for the purpose of renting the property to such an individual or family; and
2) add a requirement that the low-income housing be subject to a land use restriction agreement under a specified low income housing tax credit program that has not expired or been terminated.

A chief appraiser would be required to appraise specified low-income housing property that is under construction or that has not reached stabilized occupancy on January 1 of the tax year in which the property is appraised by using a specified income method including:
1) using a specified underwriting report to estimate the property's gross income potential and operating costs;
2) adjusting, as specified, the gross income potential and operating costs for the percentage completed on January 1; and
3) for completed properties that have not reached stabilized occupancy on January 1, adjusting the income and expenses in the underwriting report for actual occupancy.

In appraising the property for the first tax year following the completion of construction and stabilized occupancy, the chief appraiser would be required to determine the appraised value of the property by an income method specified in current law for certain low-income housing. In the second and subsequent years following the completion of construction and stabilized occupancy the chief appraiser would be required to determine the appraised value of the property by adjusting the appraised value for the preceding year by the percentage change in the net income of the property in the preceding year as compared to the year preceding that year. The chief appraiser would be required to use generally accepted appraisal standards based on information contained in specified audits or reports in determining the percentage change in net income.

For the 2020 tax year a chief appraiser would be required, for property for which construction was complete on January 1, 2019, to determine the appraised value by adjusting the average appraised value for the preceding three-year period by the percentage change in the net income of the property in the 2019 tax year as compared to the 2018 tax year. This provision would expire on January 1, 2021.

If a property appraised as provided by the bill is sold and is no longer subject to a specified land use restriction agreement, the property would not be eligible for appraisal as provided by the bill. In this circumstance the property would be subject to an additional tax equal to the difference between the actual taxes imposed for each of the three years preceding the year the property is sold and the taxes that would have been imposed had the property been appraised in each of those years at the lesser of:
1) the price for which the property is sold; or
2) the price for which the property is sold, adjusted for the applicable year by the percentage change in net income calculated as previously described.

The bill would provide for a tax lien, a determination of appraisal ineligibility, notices, and protests regarding loss of eligibility for the special appraisal provided by the bill. If the final determination is that additional taxes are due, the bill provides for an additional tax bill, relevant deadlines, and delinquency.

A property owner would not be permitted to protest based on a specified unequal appraisal provision if the appraised value is determined based on the percentage change in net income previously described. A property appraised under the bill would be ineligible for use as a comparable property for the purpose of determining whether another property that is not appraised as provided by the bill is unequally appraised.

No later than May 1 of each year, the owner of a property appraised as provided by the bill would be required to provide to the chief appraiser a copy of a specified audit or compliance report.

The bill's provisions that would require, in certain instances, the adjustment of the previous year's appraised value by the property's percentage change in net income in the previous two years might, in some cases, result in an appraised value that is higher than under current law because:
1) capitalization rates used in the income appraisal method have been at historically low levels and are expected to rise moderately, and a higher capitalization rate results in a lower value under the income appraisal method, which would not be used in these instances; and
2) operating expenses normally increase as a property ages causing a lower value under the income appraisal method, which would not be used in these instances.

The bill's provision that would require, in certain instances in tax year 2020, the use of an adjusted average of the previous three years' appraised values could in some instances result in an appraised value that is higher or lower than under current law depending on the accuracy of the appraisals over the previous three years. Values that are too high would likely be protested; however, while values that are too low would not be protested, which could result in an overall reduction in appraised values under this provision of the bill.

The tendency toward higher values because of the adjustment of the previous year's appraised value by the property's percentage change in net income in the previous two years in specified instances, and the tendency toward lower values because of the use of an adjusted average of the previous three years' appraised values in other specified instances would tend to offset; consequently, any gains or costs would not be significant.

The bill would take effect January 1, 2020.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts
LBB Staff: WP, KK, SD, SJS